THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.24641 of 2007

Dated : 23-11-2007

Between :

The Government of A.P.,
Rep.by its Secretary,
Medical & Health Department,
Secretariat Buildings, Secretariat,
Hyderabad and 2 others.

… Petitioner/s

And

Sri D. Pentaiah,
Community Health Officer (Retd.),
PHC, Kothuru,
Mahabubnagar District.

…Respondent/s

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ORAL ORDER : (per the Hon'ble Sri Justice D.S.R. Varma)

Heard learned Government Pleader for Services-I, appearing for the petitioners, and the learned counsel for the respondent.

2. This Writ of Certiorari is filed by the Government challenging the order of the A.P. Administrative Tribunal, Hyderabad (for brevity 'the Tribunal') passed in O.A.No.92 of 2004, dated 16-11-2004, setting aside the proceedings issued by second respondent in

Rc.No.20195/E5D/2001, dated 29-12-2003, and also the consequential proceedings issued by third respondent in Rc.No.14753/E1/2003, dated 01-01-2004, retiring the respondent from service with effect from 31-12-2003 on medical grounds, as requested by him.

3. The facts, in brief, are that pursuant to the representation, dated 11-12-2001, made by the respondent to the second petitioner herein seeking voluntary retirement on medical grounds, he was subjected to medical examination by the Medical Board, which issued a certificate invalidating the respondent for service. During the pendency of the said application, a further application has been made by the respondent seeking to drop the proposal of his medical invalidation on the ground that he was recovered from the illness. However, final orders have been passed by the second petitioner herein, vide proceedings, dated
29-12-2003, retiring the respondent from service with effect from 31-12-2003 on medical grounds. Aggrieved by the said orders and also in not considering his further application seeking to continue him in service even before his earlier application for voluntary retirement on medical grounds is accepted, the respondent filed O.A.No.92 of 2004 before the Tribunal.

4. The Tribunal, having considered the material on record, by order dated 16-11-2004, allowed the O.A., setting aside the proceedings issued by second respondent in Rc.No.20195/E5D/2001, dated 29-12-2003, and also the consequential proceedings issued by third respondent in Rc.No.14753/E1/2003, dated 01-01-2004, retiring the respondent from service with effect from 31-12-2003 on medical grounds, with a direction to reinstate the respondent into service with all consequential benefits.

5. Pursuant to the orders of the Tribunal, the respondent was

reinstated into service and subsequently on attaining the age of superannuation, he retired from service on 30-06-2007. Aggrieved by the orders of the Tribunal, the Government has preferred the present writ petition.

6. It is the contention of the learned Government Pleader that the respondent was actually not in service from the date of his application for voluntary retirement on medical grounds i.e., on 11-12-2001, till the disposal of O.A.No.92 of 2004 i.e., on 16-11-2004, therefore, he is not entitled for payment of any salary during the above period.

7. It is born out from the record that the actual order of termination, as already noticed, was on 29-12-2003, giving effect from 31-12-2003, and the same was set aside by the Tribunal, by order dated 16-11-2004. Therefore, it is an admitted fact that the respondent was out of employment from 01-01-2004 to 15-11-2004. However, he was reinstated into service vide G.O.Ms.No.128, Health, Medical and Family Welfare (C2) Department, dated 18-04-2006 i.e., after a lapse of two years from the date of order of the Tribunal directing to reinstate him into service.

8. The attitude of the petitioners in complying with the order of the Tribunal after a lapse of two years is neither convincing nor any valid reasons were assigned for such delay. Further, the writ petition has been filed in the month of October, 2007 and came up for hearing today i.e., on 23-11-2007, meaning thereby from the date of passing final order by the Tribunal i.e., on 16-11-2004 till today, three years had elapsed, and in the meanwhile the respondent had retired from service on attaining the age of superannuation. This long lapse of about more than three years in filing the present writ petition is not very much convincing to the Court. Therefore, the contention of the learned Government Pleader that the respondent shall not be paid the salary

for three years cannot be accepted.

9. In our considered view and as already pointed out, the respondent shall be deemed to be out of employment with effect from 01-01-2004 to 15-11-2004. In other words, this is the actual period during which the respondent was out of employment and did not serve the Government. Therefore, he is not entitled for any wages for the said period.

10. Of course, it is the contention of the learned Government Pleader that after the initial application for voluntary retirement on medical grounds was made by the respondent, he made another application for appointment of his son on compassionate grounds and the same was rejected by the Government, which had actually prompted the respondent to revoke the initial application made by him for voluntary retirement on medical grounds. But, there is neither any actual basis nor any presumption is permissible, in this regard.

11. Similarly, the conduct of the respondent initially making a representation for voluntary retirement on medical grounds and again making another representation to drop the proposal of his medical invalidation on the ground that he was recovered from the illness because of the treatment and medically found fit for service is also not very satisfactory.

12. However, having regard to the peculiar facts and circumstances, more particularly in order to give a quietus to the litigation, we want to set apart all the legal intricacies involved, if any, and deem it expedient to dispose of the writ petition with a direction to pay all the retirement benefits to the respondent, except the salary for the period from 01-01-2004 to 15-11-2004. However, the said period shall be taken into account for computation of all other benefits and for all other purposes.

13. At this juncture, the learned Government Pleader brought to the notice of this Court about some disciplinary proceedings pending against the respondent. The same cannot be taken into consideration by this Court, since the same is not the subject matter either before the Tribunal or before this Court. If any disciplinary proceedings are pending against the respondent, it is for the Government to proceed in accordance with law.

14. However, having regard to the fact that the writ petition has been filed after a long lapse of more than three years from the date of passing final order by the Tribunal, we direct the petitioners to process the retiral benefits of the respondent, as directed above, with utmost expedition.

15. With the above observations and directions, the writ petition is disposed of, at the stage of admission. There shall be no order as to costs.

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JUSTICE D.S.R. VARMA

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JUSTICE K.C. BHANU

23-11-2007
Msr

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